

EXHIBIT 6

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FILED
CLERK, U.S. DISTRICT COURT
DEC - 6 2006
CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10 EDWARD A. MORRIS and RUTH P.
11 MORRIS, husband and wife; HELEN
12 F. TRACY, a single woman; JUDY C.
PENN and BUDDY W. PENN, wife
and husband,

CV 06-5587 FMC (PJWx)

**ORDER GRANTING DEFENDANT'S
MOTION TO STAY AND DENYING
PLAINTIFFS' MOTION TO REMAND**

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Plaintiffs,

V.S.

13 MERCK & CO., INC., a New Jersey
14 Corporation; McKESSON
15 CORPORATION, a Delaware
16 corporation; DOES 1-50

Defendants.



DOCKETED ON CM
Entered
DEC - 6 2006
BY ANV 085

21 This matter is before the Court on Plaintiffs' Motion to Remand to State
22 Court (docket no. 18), and Defendant Merck & Co., Inc.'s Motion to Stay
23 Proceedings (docket no. 23), filed on October 26, 2006 and November 6, 2006,
24 respectively. The Court has considered the moving, opposition and reply
25 documents submitted in connection with the motions. The Court deems this
26 matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78,
27 Local Rule 7-15. Accordingly, the hearing set for December 11, 2006, is

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1 removed from the Court's calendar. For the reasons and in the manner set forth
2 below, the Court GRANTS Defendant's Motion to Stay and DENIES Plaintiff's
3 Motion to Remand without prejudice to the filing of a renewed motion in the
4 event that the Judicial Panel on Multidistrict Litigation ("JPML") does not
5 transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax*
6 *Prods. Liab. Litig.*

7 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Plaintiffs Edward A. Morris, Helen F. Tracy and Judy C. Penn took the
9 prescription drug Fosamax, which is manufactured and sold by Defendant Merck
10 & Co., Inc. ("Merck") and distributed by Defendant McKesson Corporation
11 ("McKesson"). Plaintiffs filed their Complaint in the Superior Court for the
12 State of California, County of Los Angeles, on August 16, 2006. Plaintiffs
13 allege, *inter alia*, that Defendants misrepresented (affirmatively and through a
14 failure to warn) that Fosamax was a safe and effective treatment for osteoporosis,
15 Paget's Disease and other conditions. Plaintiffs further allege that, as a
16 proximate result of injecting Fosamax, they have been permanently and severely
17 injured. Co-Plaintiffs Ruth P. Morris and Buddy W. Penn are bringing separate
18 claims for loss of consortium.

19 On September 6, 2006, Defendant Merck removed the action to this Court
20 on the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant
21 McKesson, a California citizen, is fraudulently joined. In their motion to
22 remand, Plaintiffs argue that joinder was proper. In its Opposition to the motion
23 and in its separate Motion for Stay, Merck maintains that resolution of the
24 question of the propriety of Plaintiffs' joinder of McKesson should be deferred
25 pending transfer of this action to the MDL proceedings in *In Re Fosamax Prods.*
26 *Liab. Litig.*, and that all other proceedings in this action should be stayed until
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1 such time.¹ McKesson joins in Merck's Opposition to the motion to remand and
2 the Motion to Stay in all respects.

3 **STANDARD OF LAW**

4 "A trial court may, with propriety, find it is efficient for its own docket and
5 the fairest course for the parties to enter a stay of an action before it, pending
6 resolution of independent proceedings which bear upon the case." *Leyva v.*
7 *Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also*
8 *Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163
9 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in
10 every court to control the disposition of the causes on its docket with economy of
11 time and effort for itself, for counsel, and for litigants.").

12 **DISCUSSION**

13 A stay of all proceedings until such time as the JPML renders its final
14 decision regarding transfer is in the interest of judicial economy. A steady
15 succession of cases involving the drug Fosamax are being filed in this district
16 and other districts throughout the country and are awaiting transfer to the MDL
17 proceedings.² Given the similarity of this litigation to other recent
18 pharmaceutical products liability litigation, the Court finds that there are likely to
19 be many more cases (in this district or otherwise) which present the precise
20 question of the propriety of joinder of Defendant McKesson and/or other

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23 ¹Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict
24 Litigation, the JPML issued a Conditional Transfer Order on September 22, 2006. Plaintiffs'
25 Motion to Vacate that Order is currently pending. *See* Request for Judicial Notice in Support of
26 Merck & Co., Inc.'s Motion to Stay Proceedings, Exhibits 1-2.

27 ²According to the JPML website, there are now 58 actions pending in MDL No. 1789, *In Re:*
28 *Fosamax Prods. Liab. Litig.* *See* http://www.jpml.uscourts.gov/Pending_MDLs/pending_mdls.html (follow "Distribution of Pending MDL Dockets").

1 "distributor" defendants.³ Consideration of Plaintiffs' remand motion by this
2 Court at this juncture would therefore run the risk of inconsistent rulings between
3 different judges in different districts and/or would constitute an inefficient use of
4 judicial resources. *Cf. Stempien v. Eli Lilly & Co.*, 2006 U.S. Dist. LEXIS 28408
5 *4 (N.D. Cal. 2006) ("[E]ven if the Court were to grant Plaintiffs' motion to
6 relate all Zyprexa cases naming McKesson Corporation in this district, judges in
7 other California districts would nonetheless have to decide the issue, thus
8 resulting in unnecessarily duplicative litigation, an inefficient use of judicial
9 resources, and the risk of inconsistent results.").

10 **CONCLUSION**

11 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay
12 Proceedings (docket no. 23) is GRANTED. Proceedings in this case are
13 STAYED until issuance of a final decision by the JPML regarding transfer or for
14 sixty (60) days, whichever is earlier.

15 Plaintiffs' Motion to Remand (docket no. 18) is DENIED without
16 prejudice to the filing of a renewed motion if transfer is denied.

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18 IT IS SO ORDERED.

19 December 6, 2006



20 FLORENCE MARIE COOPER, JUDGE

21 UNITED STATES DISTRICT COURT

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23 ³As Defendants point out, two Fosamax cases which name both Merck and McKesson as
24 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern
25 Districts of California. *See* Request for Judicial Notice in Support of Defendant Merck & Co., Inc.'s
26 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibits 1-2. The Court takes
27 judicial notice of the fact that Merck is raising the same issues of fraudulent joinder those cases and
has filed a similar motion to stay proceedings pending possible transfer to the MDL action in the
Northern District case. *See* Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria Citizens
Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice of
"proceedings in other courts, both within and without the federal judicial system, if those
proceedings have a direct relation to matters at issue.").